(2)

No. 91-1145

Supreme Court, U.S.
FILED
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In The

Supreme Court of the United States

October Term, 1991

RON CAMPBELL,

Petitioner,

vs.

THALIA DONDERO; MANNY CORTEZ; R. J. RONZONE; and W. WILSON, individually and as CLARK COUNTY COMMISSIONERS; CLARK COUNTY LIQUOR CONTROL BOARD; M. FITZPATRICK, individually and as Director of CLARK COUNTY LICENSE DEPARTMENT; Officer WELLINGTON, individually and as a member of the LAS VEGAS METROPOLITAN POLICE DEPARTMENT; MAHLON EDWARDS, individually and as a Deputy District Attorney of the CLARK COUNTY DISTRICT ATTORNEY'S OFFICE; the CLARK COUNTY LIQUOR CONTROL BOARD; the CLARK COUNTY LICENSE DEPARTMENT; the LAS VEGAS METROPOLITAN POLICE DEPARTMENT, and the CLARK COUNTY DISTRICT ATTORNEY'S OFFICE, political subdivisions of the County of Clark, State of Nevada; and JOHN DOES I through XX, inclusive,

Respondents.

Petition For Writ Of Certiorari To The Nevada Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

RAWLINGS, OLSON & CANNON

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QUESTIONS PRESENTED

1. Did the Supreme Court of Nevada properly dismiss Appellant's Appeal for lack of jurisdiction?

2. Did the Supreme Court of Nevada properly dismiss the Petitioner's appeal with prejudice, when the lower state court order was final as to all parties?

3. Do the rules of the Supreme Court of Nevada, restricting a pro se litigant's right to argue his appeal comport with Constitutional requirements?

LIST OF ALL PARTIES TO THE PROCEEDING

PLAINTIFF:

RON CAMPBELL

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OPINIONS BELOW

The Order of the Nevada Supreme Court, issued and filed on August 12, 1991, held that Petitioner's appeal to that court was premature because his Notice of Appeal was filed on March 14, 1991, yet the district court's Order was not entered until March 22, 1991. Further, that Order granted Petitioner 20 days from August 12, 1991, to show cause why the appeal should not be dismissed with prejudice.

The succeeding Order, dated September 30, 1991, dismissed with prejudice the appeal of the Petitioner for failure to show cause why the premature appeal should not be dismissed. Also in that Order, the Nevada Supreme Court, after examining the record on appeal, held that they could find no parties as to whom the March 22, 1991 was not final. Thus, the court dismissed Petitioner's appeal both for lack of jurisdiction as premature and for lack of good cause shown.

GROUNDS FOR JURISDICTION

Petitioner attempts to invoke the jurisdiction of this Court under the United States Supreme Court Rule 10(c) and 28 U.S.C. §1257. Jurisdiction of this court over this Petition is challenged for the reason that no treaty or statute of the United States is drawn in question; no state *statute* is challenged as being unconstitutional or repugnant to federal treaties or laws, and no title, right, privilege, or immunity is specially set up or claimed under the Constitution, federal treaties, or statutes. It is agreed the Order of the Supreme Court of the State of Nevada,

issued on September 30, 1991, dismissing Petitioner's appeal with prejudice based on a lack of jurisdiction and a lack of good cause shown, was final, and the issuing court is the highest court in the State of Nevada. The final Order of the Eighth Judicial District Court of the State of Nevada, which Petitioner appealed to the Nevada Supreme Court, became final and was entered on March 22, 1991.

STATUTES AND RULES APPLICABLE TO THE CASE

(A) *SUPREME COURT RULES:*

Rule 13, Review on Certiorari; Time for Petitioning.

Subsection .1: A Petition for Writ of Certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort . . . shall be deemed in time when it is filed with the Clerk of this Court within 90 days after the entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court which is subject to discretionary review by the state court of last resort shall be deemed in time when it is filed with the Clerk within 90 days after the entry of the order denying discretionary review.

. . . .

Subsection .4: The time for filing a petition for a writ of certiorari runs from the date the judgment or decree sought to be reviewed is rendered and not from the date of the issuance of the mandate (or its equivalent under local practice).

(B) *STATUTES*:

28 U.S.C. §2101 Supreme Court; time for appeal or certiorari; docketing; stay:

Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit, or proceeding before the Supreme Court for review shall be taken or applied for within 90 days after the entry of judgment or decree. The justice of the Supreme Court, for good cause shown, may extend the time for applying for a Writ of Certiorari for a period not exceeding 60 days.

(C) *OTHER RULES*:

(1) Nevada Rule of Appellate Procedure Rule 4. *Appeal – When taken.*

(a) Appeals in civil cases.

1. In a civil case in which an appeal is permitted by law from a district court to the Supreme Court, the notice of appeal required by Rule 3 shall be filed with the clerk of the district court. The notice of appeal filed after the oral pronouncement of decision or order, but before the entry of a written judgment or order, shall have no effect. A notice of appeal must be filed after the entry of a written judgment or order, and no later than thirty (30) days after the date of service of written notice of the entry of the judgment or order appealed from. . . .

. . . .

A notice of appeal filed before the formal disposition of any timely post-judgment motion enumerated in this subdivision shall have no effect. A notice of appeal must be filed after the entry

> of a written order of the district court resolving any of the post-judgment motions enumerated in this subdivision, and no later than thirty (30) days from the date of service of written notice of entry of that order.
>
> 3. A judgment or order is entered within the meaning of this rule when it is signed by the judge or by the clerk, as the case may be, and filed with the clerk. . . .

(2) Nevada Supreme Court Rules Rule 44. *Person may appear in his own behalf.*

> Nothing in these rules shall be so construed as to prevent any person from appearing in his own behalf in any court in this state except the supreme court.

STATEMENT OF THE CASE

This case stems from a civil claim for damages by the Petitioner as a result of acts of the Defendants alleged to have violated State and Federal Racketeer Influenced and Corrupted Organizations acts (RICO). Plaintiff's course of proceedings in this case is also fraught with procedural mistakes and frivolous pleading.

Petitioner first initiated these RICO actions in the Eighth Judicial District Court for the State of Nevada, and subsequently attempted to remove that case to the jurisdiction of the United States District Court for the District of Nevada. However, the federal court remanded the case back to state court pursuant to 28 U.S.C. §1446, on the basis that the case was improvidently and improperly removed by a plaintiff because such remedy only exists

for defendants. Petitioner then appealed this remand decision to the United States Court of Appeals for the Ninth Circuit, which determined that the district court's remand was proper, as that court lacked jurisdiction under 28 U.S.C. §1446, and that under 28 U.S.C. §1447(c), removal is immune from appellate review. *See*, Ninth Circuit Court Order, dated November 20, 1990, attached hereto and incorporated herein as Appendix "A".

During the period of removal, the state granted Respondents' Motion to Dismiss, and once the action was remanded to state court, the state court allowed Petitioner 20 days to respond to that Motion. That Order also admonished the Petitioner that a frivolous opposition would result in an award of attorneys' fees and costs as a sanction, and informed him he must comply with the rules of the Court or proceed at his own peril. *See*, Eighth Judicial Court Order, dated January 24, 1991, attached hereto and incorporated herein as Appendix "B".

That opposition was determined to be frivolous and without merit, and the state court, once again, granted Respondents' Motion to Dismiss, and ordered Petitioner to pay attorneys' fees as a sanction. *See*, the Eighth Judicial Court Order, dated March 22, 1991, attached hereto and incorporated herein as Appendix "C". Such sanction was not for Petitioner's failure to retain an attorney. In that same Order, the state court found that the Answer filed on November 14, 1988, on behalf of Defendants, Commissioner Dondero, Las Vegas Metropolitan Police Department, and Officer Wellington, and the joinder in the Answer, filed September 20, 1989, on behalf of all other named Defendants, was a responsive pleading as pursuant to Nevada Rule of Civil Procedure 12(a).

Petitioner appealed that Order to the Nevada Supreme Court, filed on March 14, 1991. Because the state court's Order was not entered until March 22, 1991, the Nevada Supreme Court deemed it did not have jurisdiction over the appeal and granted Petitioner 20 days from the date of that Order to show cause why the appeal should not be dismissed with prejudice. *See*, the Nevada Supreme Court Order, filed August 12, 1991, attached hereto and incorporated herein as Appendix "D". Upon Petitioner's failure to show cause and after the parties had stipulated to dismiss the appeal, the Nevada Supreme Court dismissed the appeal with prejudice. *See*, the Nevada Supreme Court Order, filed September 30, 1991, attached hereto and incorporated herein as Appendix "E".

Petitioner now attempts to incorporate these lower court actions and responses to Petitioner's procedural non-compliance, non-conformity and meritless documentation into his appeal to this Court.

ARGUMENT SUMMARY

I.

The Nevada Supreme Court's dismissal of Petitioner's appeal for lack of jurisdiction predicated upon such appeal being premature was proper. Without the proper showing of cause as to why this Court should grant jurisdiction, the Court had no choice but to dismiss the appeal.

II.

All but two of the questions presented by Petitioner for consideration by this Court are time-barred as they are presented and filed with the Clerk of this Court in excess of 90 days after the Order deciding those issues was entered by the state court on March 22, 1991. Due to the dismissal of Petitioner's with prejudice by the Nevada Supreme Court, the two issues timely filed are whether the Nevada Supreme Court acted properly in dismissing Petitioner's appeal for lack of jurisdiction, and whether the Nevada Supreme Court's Rule requiring a licensed attorney to argue an appeal is Constitutional. The other issues presented by Petitioner are time-barred from consideration because of the dismissal of appeal by the Nevada Supreme Court rendering such an appeal as a nullity. The time used for computing the time period of petitioning this Court for Writ of Certiorari began on those issues when the decision by the Eighth Judicial District Court was rendered. Because Petitioner did not refile his issues for appeal with the Nevada Supreme Court, those issues are now time-barred for presentation to this Court for consideration for Writ of Certiorari.

III.

An individual has no absolute right to argue his own appeal, a sharp contrast with his recognized privilege of conducting his own defense at trial. The criminal defendant has a right to handle his trial, but this right is limited on appeal by the discretion of the court hearing that appeal and allowing him to represent himself. The right to argue, personally, an appeal does not rise to the

Constitutional dimensions as Petitioner would have this Court believe, nor does it violate the Judicial Act of 1789. Oral argument on appeal is not an essential ingredient of due process, and it may be circumscribed where reasonable necessities so dictate.

ARGUMENT

I.

INTRODUCTION

The Rules of the Supreme Court, and specifically, Rule 10, provide the guidelines under which this Court will generally exercise its discretion and grant a petitioner a Writ of Certiorari. "Only when there are special and important reasons therefor," will a petition be granted. The issue of whether the Nevada Supreme Court acted improperly when it dismissed Petitioner's appeal for lack of jurisdiction, based upon a premature filing, is neither "special," nor "important," nor is the issue of whether a pro se litigant may argue his own appeal. The issues presented are well-settled and have been decided previously by this Court.

The guidelines set forth in United States Supreme Court Rule 10(c), under which Petitioner deems this Court has jurisdiction, provides when a Writ of Certiorari may be issued:

> When a state court or United States Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this court, or has decided a federal

question in a way that conflicts with applicable decisions of this court.

One question to be answered by this Court is whether the Nevada Supreme Court, in rendering its decision to dismiss Petitioner's appeal with prejudice, did so in a manner which conflicts with the applicable decisions of this Court. Also, this Court must decide whether the Nevada Supreme Court Rule requiring an *in propria persona* litigant to obtain an attorney for an appellate argument is Constitutional or in violation of the Judicial Act of 1789, not, as Petitioner would have this Court believe, whether such an action by the Nevada Supreme Court constitutes a federal question decided in a manner which conflicts with previous decisions of this Court, or has not yet been settled by this Court.

As demonstrated in the following argument, the Nevada Supreme Court's decisions on these issues have been decided by the Supreme Court itself. Those decisions hold that a prematurely filed appeal is interlocutory, and the Supreme Court of the State of Nevada lacks jurisdiction until the decision of the Eighth Judicial District Court becomes final as to all parties and is properly rendered, recorded, and filed. Further, this Court has held that an individual has no absolute right to argue his own appeal.

II.

THE DISMISSAL WITH PREJUDICE OF PETITIONER'S APPEAL TO THE NEVADA SUPREME COURT WAS PROPER

The Nevada Rules of Appellate Procedure clearly dictate the necessary procedure for filing a timely appeal

to the Supreme Court of the State of Nevada. Rule 4 reads in pertinent part:

> *Appeal – when taken.*
>
> (a) Appeals in civil cases.
>
> 1. In a civil case in which an appeal is permitted by law from a district court to the Supreme Court, the notice of appeal required by Rule 3 shall be filed with the clerk of the district court. The notice of appeal filed after the oral pronouncement of decision or order, but before the entry of a written judgment or order, shall have no effect. A notice of appeal must be filed after the entry of a written judgment or order, and no later than thirty (30) days after the date of service of written notice of the entry of the judgment or order appealed from. . . .
>
> . . . .
>
> A notice of appeal filed before the formal disposition of any timely post-judgment motion enumerated in this subdivision shall have no effect. A notice of appeal must be filed after the entry of a written order of the district court resolving any of the post-judgment motions enumerated in this subdivision, and no later than thirty (30) days from the date of service of written notice of entry of that order.
>
> 3. A judgment or order is entered within the meaning of this rule when it is signed by the judge or by the clerk, as the case may be, and filed with the clerk. . . .

This Rule clearly points out, as the Petitioner should have been aware, that a Notice of Appeal filed before the entry

of a written judgment or order, after the oral pronouncement of a decision, shall have no effect. Thus, because Petitioner's appeal was premature, filed with the Nevada Supreme Court on March 14, 1991, before the district court's written Order was entered on March 22, 1991, the appeal has no effect and was properly dismissed. *See*, Appendices "D" and "E". Petitioner was notified that the Court lacked jurisdiction because the appeal was premature. Moreover, that Order demonstrates the Court's flexibility in allowing this particular Petitioner 20 extra days to show cause why the appeal should not be dismissed for such a want of jurisdiction. Petitioner attempted to show cause by stating that the Order of the state court was not final as to all parties. He failed. The Nevada Supreme Court disagreed and dismissed his appeal.

Because the Notice of Appeal was filed too soon, the district court had not yet divested itself of jurisdiction, and the Nevada Supreme Court had not yet acquired it. *Paradise Palms Community Association v. Paradise Homes*, 568 P.2d 577 at 578 (Nev. 1977), cert. den. 435 U.S. 997, 98 S.Ct. 1650, 56 L.Ed.2d 86 (1978). There are sound reasons for this rule. First, the proper and timely filing of a notice of appeal is mandatory and jurisdictional. *Torres v. Oakland Scavanger Co.*, 487 U.S. 312, 108 S.Ct. 2405, 101 L.Ed.2d 285 (1988); *Houston v. Lack*, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988); *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982).

Jurisdictional rules go to the very power of a court to act. They must, accordingly, be clear and absolute in order to give all fair notice of what is required to properly bring a matter before the Nevada Supreme Court.

Prior to the entry of a final judgment, a district court remains free to reconsider the issue of a written judgment different from its oral pronouncement. The point at which jurisdiction is transferred must, therefore, be sharply delineated. This rationale has been applied to appeals and the time for filing by this Court when holding that a premature appeal must be dismissed as an interlocutory order. *See, United States v. Ryan*, 402 U.S. 530, 91 S.Ct. 1580, 29 L.Ed.2d 85 (1971); *Cobbledick v. United States*, 309 U.S. 323, 60 S.Ct. 540, 84 L.Ed. 783 (1940). Respondents respectfully request this Court to use that same rationale to reach the conclusion, in considering this Petition, that the Nevada Supreme Court's decision to dismiss Petitioner's appeal to it for lack of jurisdiction was proper.

Petitioner had the ability to refile an appeal after the district court entered its final judgment on March 22, 1991. He neglected to do so, and as a result, the issues presented to this Court that were not ruled upon by the Nevada Supreme Court are time-barred as in excess of 90 days from their final determination by the Eighth Judicial District Court on March 22, 1991.

III.

THE QUESTIONS PRESENTED BY PETITIONER ARE TIME-BARRED FROM CONSIDERATION BY UNITED STATES SUPREME COURT RULE 13

The United States Supreme Court Rule addressing the review on Certiorari; Time for Petitioning, demonstrates to this Court that Petitioner's claims are time barred from consideration, requiring this Court to deny

this Petition for Writ of Certiorari. Rule 13.1 reads in pertinent part as follows:

> A petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort . . . shall be deemed in time when it is filed with the clerk of this court within 90 days after the entry of the judgment. A Petition for a writ of certiorari seeking review of a judgment of a lower state court which is subject to discretionary review by the state court of last resort shall be deemed in time when it is filed within 90 days after entry of the order denying discretionary review.

As this Rule clearly dictates, the time frame is 90 days for which to file with the Clerk of the United States Supreme Court a petition for writ of certiorari after entry of the judgment sought to be appealed. Additionally, Congress established in 28 U.S.C. §2101 the time for filing a petition, and such mandate must be followed by the Petitioner as a prerequisite to this Court's jurisdiction. *Schacht v. United States*, 398 U.S. 58, 65, 90 S.Ct. 1555, 26 L.Ed.2d 44 (1970). As held by this Court, the statutory requirement that the petition for writ of certiorari in civil cases be filed within 90 days of entry of judgment in lower courts is mandatory and jurisdictional, giving this Court no authority to extend that period for filing, except as Congress permits. *See, Missouri v. Jenkins*, 495 U.S. 33, 110 S.Ct. 1651, 109 L.Ed.2d 31 (1990).

Because the Nevada Supreme Court denied Petitioner's appeal as premature, it never had jurisdiction of the case and did not deny appeal of the issues presented. It simply never reviewed those issues. Therefore, the Eighth Judicial District Court retained jurisdiction, and

the Nevada Supreme Court's decision to dismiss with prejudice Petitioner's appeal as premature was proper.

This leaves Petitioner appealing the decision of the district court as to the issues presented to this Court for review. Because the final Order issued by the district court was on March 22, 1991, those issues are now time-barred for reconsideration by this Court, as clearly in excess of the 90 day mandate of the Supreme Court Rules and the Statutes of the United States. Petitioner's deadline for filing ended, at the very latest, in June of 1991. The Petition for Writ of Certiorari was not filed with this Court until December 30, 1991, almost 120 days in excess of the 90 day period. Thus, this Court must deny Petitioner's Writ for Certiorari on these issues.

IV.

THE NEVADA SUPREME COURT RULE REQUIRING AN ATTORNEY LICENSED IN THE STATE OF NEVADA TO ARGUE AN APPEAL IS CONSTITUTIONAL

The Petitioner claims the limitation of the Nevada Supreme Court requiring an attorney licensed in the State of Nevada to proceed with the appeal constitutes a Constitutional violation. Nevada Supreme Court Rule 44, which Petitioner alleges violated his Constitutional rights, reads as follows:

> *Person may appear in his own behalf.*
>
> Nothing in these rules shall be so construed as to prevent any person from appearing in his own behalf in any court in this state except the supreme court.

Petitioner claims that this is a violation of the Judicial Act of 1789 of the First Congress, Session 1, Chapters 20(XX), Sections 32 and 35, and is in conflict with the policies of this Court in the case of *Haines v. Kerner, former governor, State of Illinois, et al.*, 405 U.S. 948, 92 S.Ct. 963, 30 L.Ed.2d 652 (1972). However, that case arises out of a district court granting a respondent's motion to dismiss, under Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim upon which relief can be granted. The ultimate issue brought before the Supreme Court in that case was whether a district court erred in dismissing a pro se complaint without allowing him to present evidence of his claims of a deprivation of a federally protected right. More specifically, the Court delved into the sufficiency of the pleadings and how they were drawn, not whether the pro se petitioner could represent himself on appeal in front of the court of appeals. Therefore, such case is inapplicable to the Petition currently before this Court.

The United States District Court of Nevada has upheld this Nevada Supreme Court rule in a previous challenge, in the cases of *Mirin v. Justices of Supreme Court*, 415 F.Supp. 1178 (1976) and *Price v. Johnston*, 334 U.S. 266, 68 S.Ct. 1049, 92 L.Ed.2d 1356, (1947), where this Court had elaborated on the distinction between trials and appeals, with the criminal defendant having a right to handle his trial, but being limited on appeal by the discretion of the United States Court of Appeals in allowing or disallowing him to represent himself. In studying the discretionary nature of appearing without representation on appeal, the Court in *Price*, 334 U.S. at 285-286, 68 S.Ct. at 1060, 92 L.Ed.2d at 1369, held:

> The discretionary nature of the power in question grows out of the fact that a prisoner has no absolute right to argue his own appeal or even to be present at the proceedings in an appellate court. *Schwab v. Berggren*, [143 U.S. 442, 12 S.Ct. 525, 36 L.Ed.2d 218] *supra*. The absence of that right is in sharp contrast to the Constitutional prerogative of being present in person at each significant stage in a felony conviction, [citations omitted] and to his recognized privilege of conducting his own defense at trial. . . . Oral argument on appeal is not an essential ingredient of due process, and it may be circumscribed as to prisoners where reasonable necessity so dictates.
>
> A prisoner's right to participate in oral argument on appeal is accordingly to be determined by the exercise of the discretionary power of the circuit court of appeals under §262.

The court in *Mirin* then concluded that because the court, in *Price*, made it clear that the right to argue, personally, a criminal appeal, does not rise to federal Constitutional dimensions, it necessarily follows that the civil defendant's right to orally argue a civil appeal can be no greater.

As the District Court of Nevada applied *Price* to its civil action in *Mirin, supra*, these Respondents ask this Court to apply *Price* to the situation presented in the Petition herein. Then, the refusal to allow the Petitioner's appearance *in propria persona* before the Nevada Supreme Court does not violate the Judicial Act of 1789 of the First Congress, Session 1, Chapter 20(XX), Sections 32 and 35. For that reason, this Court must deny Petitioner's Writ of Certiorari on this issue.

V.

CONCLUSION

As demonstrated by the arguments above, the sole question presented to this Court within the mandatory 90 day period for a petition for writ of certiorari, is whether the Supreme Court of Nevada properly dismissed Petitioner's appeal for a lack of jurisdiction. All other issues adjudicated by the Eighth Judicial District Court, culminating in a final Order of March 22, 1991, were not presented to the Nevada Supreme Court and are now time-barred for reconsideration by this Court. United States Supreme Court Rule 13; and 28 U.S.C. §2101. Accordingly, the decision of the Nevada Supreme Court dismissing Petitioner's appeal as premature for lack of jurisdiction must be affirmed, and the Petition for Writ of Certiorari must be denied.

Further, if denying a pro se criminal defense, a right to participate in oral argument on appeal does not rise to federal Constitutional dimensions, neither can denying a pro se civil defendant. For that additional reason, Petitioner's Writ for Certiorari must be denied.

Respectfully submitted,

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APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RON CAMPBELL, Plaintiff-Appellant, vs. THALIA DONDERO, et al., Defendants-Appellees.	No. 89-15493 D. C. No. CV-88-0770-LDG MEMORANDUM* (Filed Nov. 20, 1990)

Appeal from the United States District Court
for the District of Nevada
Lloyd D. George, District Judge, Presiding

Submitted November 16, 1990**

Before: FLETCHER, WIGGINS, and RYMER, Circuit Judges.

Ron Campbell appeals pro se the district court's remand of his civil RICO action which Campbell had removed to federal court. We dismiss the appeal pursuant to 28 U.S.C. § 1447(d) for lack of jurisdiction.

On September 26, 1988, Campbell filed his complaint in Nevada state court alleging federal and state RICO

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for disposition without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

violations by the defendants. The next day, Campbell removed his action to federal district court for the District of Nevada. On March 17, 1989, the district court denied the petition for removal and remanded Campbell's action to state court because it could only properly be removed by the defendants pursuant to 28 U.S.C. § 1446. Campbell filed a timely notice of appeal with this court.

28 U.S.C. § 1447(c) requires a district court to remand a case to state court when it determines the case was removed without jurisdiction. *Whitman v. Raley's, Inc.*, 886 F.2d 1177, 1180 (9th Cir. 1989). Remand orders based on the grounds specified in section 1447(c), i.e., that removal was "improvident and without jurisdiction," are immune from appellate review. *Thermtron Prods., Inc. v. Hermansdorfer*, 423 U.S. 336, 343 (1976); *Hansen v. Blue Cross*, 891 F.2d 1384, 1387 (9th Cir. 1989) (citing 28 U.S.C. § 1447(d); *Gravitt v. Southwestern Bell Tel. Co.*, 430 U.S. 723, 723 (1977) (per curiam)). When a district court's remand order is based on a nonjurisdictional ground, however, section 1447(d) does not bar appellate review. *Hansen*, 891 F.2d at 1387 (citations omitted).

Here, the district court remanded Campbell's action to district court because Campbell, and not the defendants, had removed the case to federal court. Removal is available only to defendants. 28 U.S.C. §§ 1441(c), 1442, 1443, 1446(c); *Okot v. Callahan*, 788 F.2d 631, 633 (9th Cir. 1986). The district court, therefore, determined that it lacked jurisdiction to review Campbell's action due to a "defect in removal procedure." *See* 28 U.S.C. § 1447(c). Because the district court's decision to remand was based on a jurisdictional ground, section 1447(d) precludes our

review of the remand order. *See id.; Hansen,* 891 F.2d at 1387.

Appellees' request for attorneys fees on appeal pursuant to Fed. R. Civ. P. 11 is denied.

DISMISSED.

APPENDIX B

DANA JONATHON NITZ, ESQ.
RAWLINGS, OLSON & CANNON
State Bar No. 000050
301 E. Clark #1000
Las Vegas, Nevada 89101
(702) 384-4012

DISTRICT COURT

CLARK COUNTY, NEVADA

RON CAMPBELL, Plaintiff, vs. THALIA DONDERO; MANNY CORTEZ; R. J. RONZONE; W. WILSON, AND BRUCE L. WOODBURY, INDIVIDUALLY and as CLARK COUNTY COMMISSIONERS; CLARK COUNTY LIQUOR CONTROL BOARD; D. FITZPATRICK, INDIVIDUALLY and as Director of CLARK COUNTY LICENSE DEPARTMENT; Officer WELLINGTON, INDIVIDUALLY and as a member of the LAS VEGAS METROPOLITAN POLICE DEPARTMENT; MALON EDWARDS, INDIVIDUALLY and as a Deputy DISTRICT	CASE NO. A268414 DEPT NO. X DOCKET K ORDER (Filed Jan. 25, 1991) HEARING DATE: 1-15-91 HEARING TIME: 9:00 a.m.

ATTORNEY of the CLARK COUNTY DISTRICT ATTORNEY OFFICE; the CLARK COUNTY LIQUOR CONTROL BOARD; the CLARK COUNTY LICENSE DEPARTMENT; the LAS VEGAS METROPOLITAN POLICE DEPARTMENT, CLARK COUNTY DISTRICT ATTORNEY'S OFFICE; and the political subdivisions of the county of CLARK, state of NEVADA, and JOHN/JANE DOES 1 through 20 inclusive,

Defendants.

UPON HEARING OF PLAINTIFF'S MOTION TO SET ASIDE ORDER, attended by Plaintiff, Ron Campbell on his own behalf, and by Dana Jonathon Nitz, Esq., of the law office of Rawlings, Olson & Cannon on behalf of all Defendants, upon consideration of the parties' Points and Authorities and upon acquiescence of Defendants' counsel, it is hereby ORDERED:

1. Plaintiff's Motion is granted to the extent that the Order entered December 20, 1988, granting Defendants' Motion to Dismiss is set aside, provided Plaintiff files Points and Authorities in Opposition to that Motion to Dismiss.

2. Plaintiff shall have until February 4, 1991, in which to serve and file his Opposition.

3. If Plaintiff fails to serve and file his Opposition by February 4, 1991, the previous Order of this Court shall stand.

4. Defendants shall have until February 11, 1991, in which to file any reply Points and Authorities in support of their Motion to Dismiss.

5. Rehearing of the Motion to Dismiss shall be held February 12, 1991 at the hour of 9:00 a.m.

6. If Plaintiff files an Opposition to the Motion to Dismiss and the Motion is, once again, granted, this Court will award Defendants' reasonable expenses, including attorneys' fees, incurred as a result of Plaintiff's filing his Motion to Set Aside Order and Opposition to Motion to Dismiss under Rule 11 of the Nevada Rules of Civil Procedure and NRS 18.010.

7. All other relief requested in Plaintiff's Motion to Set Aside Order is denied.

DATED this 24th day of January, 1991.

JACK LEHMAN
DISTRICT JUDGE

SUBMITTED BY:

RAWLINGS, OLSON & CANNON

/s/ Dana Jonathon Nitz
Dana Jonathon Nitz, Esq.
State Bar No. 000050
301 E. Clark #1000
Las Vegas, Nevada 89101
Attorneys for Defendants

APPENDIX C

DANA JONATHON NITZ, ESQ.
RAWLINGS, OLSON & CANNON
State Bar No. 000050
301 E. Clark #1000
Las Vegas, Nevada 89101
(702) 384-4012

DISTRICT COURT

CLARK COUNTY, NEVADA

RON CAMPBELL, Plaintiff, vs. THALIA DONDERO; MANNY CORTEZ; R. J. RONZONE; W. WILSON, AND BRUCE L. WOODBURY, INDIVIDUALLY and as CLARK COUNTY COMMISSIONERS; CLARK COUNTY LIQUOR CONTROL BOARD; D. FITZPATRICK INDIVIDUALLY and as Director of CLARK COUNTY LICENSE DEPARTMENT; Officer WELLINGTON, INDIVIDUALLY and as a member of the LAS VEGAS METROPOLITAN POLICE DEPARTMENT; MALON EDWARDS, INDIVIDUALLY and as a Deputy DISTRICT ATTORNEY of the CLARK COUNTY DISTRICT ATTORNEY OFFICE; the CLARK COUNTY LIQUOR	CASE NO. A268414 DEPT NO. X DOCKET K ORDER (Filed Mar. 22, 1991) HEARING DATE: 02-12-91 HEARING TIME: 9:00 A.M.

CONTROL BOARD; the CLARK COUNTY LICENSE DEPARTMENT; the LAS VEGAS METROPOLITAN POLICE DEPARTMENT, CLARK COUNTY DISTRICT ATTORNEY'S OFFICE; and the political subdivisions of the county of CLARK, state of NEVADA, and JOHN/JANE DOES 1 through 20 inclusive,

Defendants.

Defendants' Motion to Dismiss having come on for hearing this 12th day of February, 1991, Plaintiff RON CAMPBELL appearing on his own behalf, and Defendants THALIA DONDERO, MANNY CORTEZ, R.J. RONZONE, W. WILSON, BRUCE WOODBURY, CLARK COUNTY LIQUOR CONTROL BOARD, D. FITZPATRICK, OFFICER WELLINGTON, MALON EDWARDS, the CLARK COUNTY LIQUOR CONTROL BOARD, THE CLARK COUNTY LICENSE DEPARTMENT, THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT AND THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE appearing by and through their attorneys, RAWLINGS, OLSON & CANNON and DANA JONATHON NITZ, ESQ., and after reviewing the Complaint and points and authorities of the parties on file herein, and having heard the arguments of counsel, this Court does hereby

ORDER, ADJUDGE AND DECREE that Defendants' Motion to Dismiss the Plaintiff's Civil Complaint for

Damages from Racketeer Influenced and Corrupted Organization Acts (RICO/NRS Chapter 207) seeking relief under 18 USC §1961 et seq. is granted;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's claim for relief pursuant to 18 USC §1961 et seq. is dismissed;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's claims for punitive damages are dismissed as to all Defendants pursuant to NRS 41.035.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Opposition to said Motion is frivolous and that Plaintiff is ordered to pay to Defendants, in care of their counsel, RAWLINGS, OLSON & CANNON, $350.00 as and for attorneys fees as a sanction under Rule 11 of the Nevada Rules of Civil Procedure and NRS 18.010.

IT IS FURTHERED ORDERED, ADJUDGED AND DECREED that the Answer filed November 14, 1988 on behalf of Defendants Commissioner Dondero, Las Vegas Metropolitan Police Department, and Officer Wellington, and the Joinder in Answer, filed September 20, 1989 on behalf of all other named Defendants is accepted by this court as a responsive pleading under Rule 12(a) of the Nevada Rules of Civil Procedure and no further pleading need be filed by Defendants.

DATED this 22 day of March, 1991.

JACK LEHMAN
DISTRICT JUDGE

SUBMITTED BY:

RAWLINGS, OLSON & CANNON

/s/ Dana Jonathon Nitz
Dana Jonathon Nitz, Esq.
State Bar No. 000050
301 E. Clark #1000
Las Vegas, Nevada 89101
Attorneys for DEFENDANTS

APPENDIX D

IN THE SUPREME COURT
OF THE STATE OF NEVADA

RON CAMPBELL, Appellant, vs. THALIA DONDERO, MANNY CORTEZ, R.J. RONZONE, W. WILSON and BRUCE WOODBURY, Individually and as Clark County Commissioners; CLARK COUNTY LIQUOR CONTROL BOARD; D. FITZPATRICK, Individually and as Director of Clark County License Department; OFFICER WELLINGTON, Individually and as a member of the Las Vegas Metropolitan Police Department; MALON EDWARDS, Individually and as a Deputy District Attorney of the Clark County District Attorney's Office; THE CLARK COUNTY LICENSE DEPARTMENT; THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT; CLARK COUNTY DISTRICT ATTORNEY'S OFFICE; and THE POLITICAL SUBDIVISIONS OF THE COUNTY OF CLARK, STATE OF NEVADA, Respondents.	No. 22107

ORDER

(Filed Aug. 12, 1991)

This is an appeal from an order of the district court dismissing appellant's complaint seeking damages pursuant to 18 USC §§ 1961 *et seq.*

Appellant has filed in this court a document entitled "Ex-Parte Motion to Dismiss Appeal," claiming that the judgment of the district court is not final as to all the parties. Appellant requests that this court dismiss the appeal without prejudice to his right to reinstate it when a final judgment has been entered by the district court. Included in appellant's motion is a stipulation to dismiss signed by opposing counsel.

After examining the record on appeal, we are unable to identify any party to whom the district court's judgment was not final. Further, we note that although appellant's notice of appeal was filed on March 14, 1991, the district court's order was not entered until March 22, 1991. It appears, therefore, that appellant's notice of appeal was premature and fails to vest jurisdiction in this court. *See* Ruse v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987).

Accordingly, appellant shall have twenty (20) days from the date of this order within which to show cause why this appeal should not be dismissed with prejudice.

We stay the briefing of this appeal pending further order of this court.

It is so ORDERED.

/s/ Springer A.C.J.

cc: Alan R. Harter
Rawlings, Olson & Cannon

APPENDIX E

IN THE SUPREME COURT
OF THE STATE OF NEVADA

RON CAMPBELL, Appellant, vs. THALIA DONDERO, MANNY CORTEZ, R.J. RONZONE, W. WILSON and BRUCE WOODBURY, Individually and as Clark County Commissioners; CLARK COUNTY LIQUOR CONTROL BOARD; D. FITZPATRICK, Individually and as Director of Clark County License Department; OFFICER WELLINGTON, Individually and as a member of the Las Vegas Metropolitan Police Department; MALON EDWARDS, Individually and as a Deputy District Attorney of the Clark County District Attorney's Office; THE CLARK COUNTY LICENSE DEPARTMENT; THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT; CLARK COUNTY DISTRICT ATTORNEY'S OFFICE; and THE POLITICAL SUBDIVISIONS OF THE COUNTY OF CLARK, STATE OF NEVADA, Respondents.	)	No. 22107

ORDER DISMISSING APPEAL

(Filed Sept. 30, 1991)

This is an appeal from an order of the district court dismissing appellant's complaint seeking damages pursuant to 18 U.S.C. section 1961 (1988).

Appellant filed in this court a document entitled "Ex-Parte Motion to Dismiss Appeal," claiming that the judgment of the district court is not final as to all the parties. Appellant requested that this court dismiss the appeal without prejudice to his right to reinstate it when a final judgment had been entered by the district court. Included in appellant's motion was a stipulation to dismiss signed by opposing counsel.

After examining the record on appeal, this court was unable to identify any party to whom the district court's judgment was not final. Further, we noted that although appellant's notice of appeal was filed on March 14, 1991, the district court's order was not entered until March 22, 1991. Thus, it appeared that appellant's notice of appeal was premature and failed to vest jurisdiction in this court. *See* Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987). This court therefore ordered appellant to show cause why this appeal should not be dismissed with prejudice.

In response to our order to show cause, appellant does not identify specific parties to whom the district court's order was not final. Rather, appellant states that "[a]nswers had been filed in the court below for Defendants Dondero, Las Vegas Metropolitan Policy Department, and Wellington only, and the Order of the Court below filed March 22, 1991, actually applied only to the

answering Defendants." This is not true. As stated in the order of the district court entered March 22, 1991, all other named parties joined in the answer on September 20, 1989. The district court's order was thus final as to all parties.

Because the district court's order was final as to all claims and all parties, and because appellant's notice of appeal was premature with respect to that order, we conclude that we lack jurisdiction to entertain this appeal. Accordingly, we dismiss this appeal with prejudice. We deny as moot the parties' motion to dismiss this appeal without prejudice.

It is so ORDERED.

/s/ Mowbray, C.J.
Mowbray

/s/ Springer, J.
Springer

/s/ Rose, J.
Rose

/s/ Steffen, J.
Steffen

/s/ Young, J.
Young